

January 28, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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JOHN CORNYN
Attorney General

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Mr. Michael J. Bostic
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
City Hall
Dallas, Texas 75201

OR99-0260

Dear Mr. Bostic:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121523.

The Dallas Police Department (the "department") received a request for "a copy of the photographs contained in Photo File Number 98-190." You contend that some of the requested photographs are excepted from disclosure pursuant to section 552.119 because they depict police officers. You state your intention to release copies of those photographs that do not depict police officers.

Initially, we note that the department received the request for information on October 7, 1998, but you did request a decision from this office until October 28, 1998. Chapter 552 of the Government Code imposes a duty on a governmental body seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. The department's delay in this case results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ). In order to overcome the presumption that information is public, a governmental body must provide a compelling reason why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The applicability of section 552.119 provides such a compelling reason. *See* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense).

Except in limited circumstances that do not appear to apply here, section 552.119(a) protects from disclosure "a photograph that depicts a peace officer as

defined by Article 2.12, Code of Criminal Procedure.” A photograph that depicts a peace officer may be released only if the peace officer consents to the disclosure in writing. Gov’t Code § 552.119(b). Thus, the department must withhold the submitted photographs from disclosure unless the peace officers have given their written consent for release.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Karen Hattaway".

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 121523

Enclosures: Submitted photographs

cc: Ms. Misty Keown
Rubin & Gugenheim, P.C.
701 Commerce Street, Suite 640
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(w/o enclosures)